

1 identification as
2 Normandy Exhibit No.
3 7, was rejected).

4 JUDGE SIPPEL: Let's move on to Exhibit 8.

5 Exhibit 8 is a 15-page document that's
6 entitled, "Statement as to attending and efforts to
7 upgrade appliance."

8 Did you prepare this Exhibit, Mr. Lynch?

9 MR. LYNCH: I did, Your Honor.

10 JUDGE SIPPEL: Tell me what it's purpose
11 is.

12 MR. LYNCH: Again, it goes toward
13 mitigating circumstances. I honestly tried to stay in
14 compliance with all FCC regulations, as long as I've
15 been in business. I've never knowingly breached an FCC
16 rule in my life; but I've gone to a number of different
17 -- a number of different seminars as far as staying
18 current with the rules. And this is just evidence on
19 one and evidence that I was willing to put forth
20 efforts to stay in compliance. And if I was out of
21 compliance it wasn't because I sat down and brazenly
22 said, "Well, I'm going to fly in the face of the FCC."
23 You don't do that, nor have I ever.

24 JUDGE SIPPEL: Has any of this evidence --
25 has any of it been offered in the Skidelsky case?

1 MR. LYNCH: None of it, Your Honor.

2 JUDGE SIPPEL: This is all new?

3 MR. LYNCH: It's all brand new.

4 JUDGE SIPPEL: It was all created after
5 the Skidelsky -- came in?

6 MR. LYNCH: Yes.

7 JUDGE SIPPEL: Mr. Tillotson.

8 MR. TILLOTSON: Your Honor, this isn't --
9 The issue here and the issues in Skidelsky that he
10 would like to exculpate or mitigate are not issues
11 relating to FCC rule compliance that somehow somebody
12 failed to -- or the keep their public file correctly
13 and because of that they are showing their good
14 intentions after having gotten cited for that violation
15 and perhaps fined of going and taking a course to learn
16 to do it better. The issue is misrepresentation to the
17 agency.

18 And you can't fix misrepresentation by
19 going to an NAB Renewal Seminar where you learn about
20 what you need to do to file your license renewal
21 application, which is what these documents tell us he
22 did.

23 The purpose of the convention or the
24 seminar that he went to was a conference on renewal
25 considerations; and the documents are a license renewal

1 check list, what forms and things you need to do to
2 file a license renewal application.

3 It was in February of 1990, in
4 anticipation one year later of a renewal filing for --

5 JUDGE SIPPEL: All right. Mr. Schonman.

6 MR. SCHONMAN: Bureau agrees.

7 JUDGE SIPPEL: Your position is it's just
8 not relevant at all for this case, even under the
9 rubric of exculpatory evidence.

10 MR. SCHONMAN: I had thought for a moment
11 it might come in as mitigation; but it seems pretty far
12 removed, an attempt to show mitigation through
13 attendance at a meeting.

14 MR. LYNCH: Attendance at a meeting, plus
15 very specific actions I took, such as building a fence
16 and changing my ANCI (phonetic) policy.

17 JUDGE SIPPEL: If this evidence were
18 received on the narrow issue of exculpation mitigation,
19 I wouldn't see the need to go into this in great detail
20 -- I think this is the type of -- this is how he wants
21 to present his mitigation, it comes in, I don't know
22 what there would be to test him on this. It's just a
23 matter of law as to whether or not this amounts to
24 litigation or exculpation.

25 MR. TILLOTSON: Well, certainly the -- let

1 take for a second, we've got the first page, which is
2 he tells you what he did. The next number of pages
3 show that he actually went to the convention and what
4 the forms that they scribbled on were at the
5 convention, apparently, drafts of the renewal form,
6 which contain no information that would be -- with some
7 question marks and numbers and boxes and like he took
8 notes on some forms and something, then, on a public
9 file where he scribbled some notes.

10 And, at the end, a photograph a fence.

11 Now, I guess one thing we've got here is
12 he has admitted that in addition to the other problems
13 he had and in addition to his claim that he never had a
14 problem with the FCC that he had a problem with his
15 compliance with the ANCI requirements that required him
16 to go out and build a fence which suggests to me that
17 maybe if the FCC had inspected him more thoroughly or
18 more frequently they would have found other problems.

19 The fact that -- paragraph 5, the best --
20 the person -- on -- "to the best of our recollection as
21 of the date the person -- the last FCC on-premises
22 inspections, which show an overall FCC compliance."
23 How can that possibly be relevant, probative testimony
24 -- 3, I think, which you cited, the Federal Rules --

25 I mean, I recognize that we didn't have to

1 spend any time cross examining him; but I don't think
2 any of this belongs in the record at all.

3 JUDGE SIPPEL: Well, if I'm reading what
4 the Review Board is saying right, that they do want --
5 in this proceeding, they do want this type of a
6 proceeding, where you've got -- an Ocean Pines issue
7 that was a finding and an ID in another case that's
8 adverse to the renewal applicant, they want the renewal
9 applicant to have his day in court and tell the story,
10 so to speak, in a way he wants to tell it. Otherwise,
11 there wouldn't be any point in going through this
12 process, might just as well go off on the summary
13 decision, which you had earlier asked for. And the
14 main reason why we couldn't get it was because Mr.
15 Lynch had not yet been given his day in court.

16 MR. TILLOTSON: But this is before -- all
17 of this information was available before Skidelsky, the
18 things he's talking about here. This isn't something
19 he did afterwards to show that he's now gotten religion
20 and he's cured his sins. And so I don't -- I mean, I
21 don't -- see how you could -- the renewal -- the Review
22 Board --

23 JUDGE SIPPEL: Well -- you're arguing
24 weight -- You're really arguing --

25 MR. TILLOTSON: Well, I think I'm arguing

1 that the Review Board -- it's saying, "We'll give you a
2 chance to come in and show us there's something that
3 might mitigate or exculpate, but it doesn't mean you
4 can come in and give us the Washington Telephone
5 Directory and say, 'Somewhere in there there's
6 evidence.'"

7 JUDGE SIPPEL: Nobody's given the
8 Washington Telephone Directory --

9 MR. SCHONMAN: Your Honor, I would submit
10 that what constitutes mitigating evidence is a very
11 broad and general subject.

12 I think as a point of compromise, I would
13 move for receipt of this Exhibit with the exception of
14 paragraphs 4 and 5. I believe that paragraph 4 is
15 irrelevant. One does not get into better compliance
16 with ANCI guidelines. One is either in compliance or
17 not in compliance.

18 And, then, paragraph 5 is just
19 unsupported.

20 JUDGE SIPPEL: Let me see. Okay. You're
21 talking about the first page, now, of Exhibit 8.

22 MR. SCHONMAN: Yes.

23 JUDGE SIPPEL: Well, if paragraph 4 goes
24 out, then Exhibit 3 would go out with it, wouldn't it -
25 - sit there and wouldn't tell us anything.

1 MR. LYNCH: -- two different -- The three
2 things here is, one, the receptionist of over 20 years
3 employ -- when I came back from this, she went through
4 my entire public inspection file -- that's her
5 handwriting on the left -- and after working with
6 somebody for 20 years, you trust them. And she comes
7 back -- the station's Quarterly Issues Program --
8 significantly addressed by station, you know, are they
9 in there? She writes, "Yes." I relied on her. It
10 wasn't like I went out and did this on purpose, as far
11 as defense --

12 JUDGE SIPPEL: Well, wait a minutes. Is
13 she coming in to testify?

14 MR. LYNCH: I can guarantee the other two
15 people. I don't know if she is coming --

16 JUDGE SIPPEL: Well, where are you
17 referring to when you're talking about these yeses? Is
18 this on --

19 MR. LYNCH: 11.

20 JUDGE SIPPEL: Well, you know -- I mean,
21 this is just not the way to -- this is just not the way
22 to receive evidence. I mean -- you know -- you're
23 trying to testify for your secretary --

24 MR. LYNCH: No --

25 JUDGE SIPPEL: -- on an issue which goes

1 to -- well, on a factual matter, which could very much
2 go to exactly what it is that you're trying to show
3 with this type of evidence.

4 MR. LYNCH: What I'm showing is -- again -
5 - that I gave this to her just to double check and make
6 sure the public file was in order. And she gave it
7 back to me --

8 JUDGE SIPPEL: Well, wait a minute. Wait
9 a minute.

10 MR. LYNCH: -- in mitigation --

11 JUDGE SIPPEL: Wait a minute. Wait a
12 minute. When was that done? Was that -- When was that
13 --

14 MR. LYNCH: This was done when I came back
15 from the conference. I tried to go up and down --

16 JUDGE SIPPEL: What date are you talking
17 about?

18 MR. LYNCH: Oh, God.

19 JUDGE SIPPEL: What year are you talking
20 about?

21 MR. LYNCH: It's 1990. It's about -- it's
22 approximately February 1990. After I came back from
23 the conference, I did a number of things to see if we
24 were in compliance or not in compliance.

25 JUDGE SIPPEL: And when did Judge

1 Kuhlman's decision come --

2 MR. TILLOTSON: April of '91.

3 MR. LYNCH: A long time after that. This
4 had nothing to do with Judge Kuhlman. This is just
5 something I -- you know -- once every seven years and
6 the rules --

7 There's not a radio station in the United
8 States of America that's in 100 percent compliance with
9 FCC Rules, not one, ever, period. You know, if you
10 look hard enough, you'll find something. But we try.

11 And in mitigation, we did try. You know,
12 I had to rely on an employee tell me that, yes, our
13 public file was excellent.

14 I spent whatever it took to build a larger
15 fence. It wasn't that I didn't have a fence. It just
16 --

17 MR. SCHONMAN: Your Honor, is there a
18 suggestion that Mr. Lynch should have introduced this
19 information in the Skidelsky case? Because I --

20 JUDGE SIPPEL: Not by my question --

21 MR. SCHONMAN: I mean, I'm not entirely
22 familiar with the issues in that case; but I can't
23 imagine why this material would have been relevant to
24 that case.

25 JUDGE SIPPEL: No, I'm not asking the

1 question. I'm trying to get at in terms of the
2 relation -- the time element, when was this information
3 put together in relation to the Skidelsky decision, not
4 that it should have been necessarily introduced --

5 MR. TILLOTSON: But, Your Honor, I think
6 Mr. Schonman makes the point that I thought Your Honor
7 had made earlier, and I think the Bureau's made, that
8 information that would be offered in mitigation should
9 be information that could not have been offered during
10 the Skidelsky case.

11 What we're saying is -- what he's saying
12 is, "I did all these things to show my compliance and
13 to be a good broadcaster." And that should have been
14 offered to mitigate any problems he had had in the
15 Skidelsky case so Judge Kuhlman could have taken into
16 consideration.

17 If this comes into evidence, I am going to
18 ask leave to cross examine Mr. Lynch on the issue that
19 you did not give me, which is whether that issues
20 programs list were -- because there's evidence from the
21 Skidelsky case that there were -- in fact, Mr. Lynch
22 admitted on the stand in the Skidelsky case that the
23 file wasn't complete and that they had to supplement it
24 after we raised an issue there. Now, that's in the
25 record in Skidelsky. And so we're going to get into

1 all of that and reopen Skidelsky about the fact that
2 I'm in compliance after going to the NAB and checking a
3 form.

4 MR. LYNCH: That's -- You're --

5 JUDGE SIPPEL: Well -- Go ahead.

6 MR. LYNCH: Excuse me. He's -- black-and-
7 white error on that. The testimony was that when we
8 were looked at we were putting the stuff together,
9 which is one of the reasons that it was a little bit
10 scattered out. At the time, before his agent or
11 Bradmark's agent came in, we were trying -- you know --
12 again, as part of this, we were trying to reorganize,
13 clearly mark anything that was added over -- you know -
14 - or away from the time period. But we were trying to
15 put our public file together. It was not after the
16 fact in way, shape or form.

17 JUDGE SIPPEL: Well, yes, but the point is
18 is that this is something that was not done in reaction
19 to what happened in Skidelsky. This is something that
20 was going on at the time and that could have been --
21 I'm not sure it would have been received in evidence,
22 but it could have been presented to the presiding judge
23 in Skidelsky, and yet it wasn't. Now, it's trying to
24 be brought in --

25 MR. LYNCH: No.

1 JUDGE SIPPEL: -- to backfill the problem
2 that occurred in Skidelsky.

3 MR. LYNCH: It wouldn't be germane. I
4 didn't have a problem until he came out against me and
5 the Review Board affirmed it. This --

6 JUDGE SIPPEL: Wait, wait, wait, wait,
7 wait -- wait a minute. You had the issue against you.
8 The issue didn't just appear out of air. You had the
9 issue added against you in Skidelsky, isn't that
10 correct?

11 MR. LYNCH: Yes, I did.

12 JUDGE SIPPEL: So I'm saying that this
13 could have been considered for use in connection with
14 that issue.

15 MR. LYNCH: This is only for mitigating.
16 The issues that were added against me in Skidelsky were
17 a site issue, withholding of evidence issue and
18 inadequate programming issue. This wouldn't be
19 responsive to any of them.

20 I'm just saying -- I enter this in as
21 mitigating evidence that I have tried over my license
22 term --

23 JUDGE SIPPEL: Wait a minute. Is that
24 true that this would not be relevant to any of the
25 issues that were -- litigated in Skidelsky?

1 MR. TILLOTSON: Well, Your Honor --

2 JUDGE SIPPEL: I mean, in the sense that
3 it wouldn't relate to -- I'm not saying it would be
4 admitted; but -- I'm not trying to --

5 MR. TILLOTSON: My understanding would be
6 that you could have made the same argument there as
7 here, that somehow, "I'm a good broadcaster. I've made
8 all of these efforts to comply with the FCC's rules and
9 maybe I goofed a little bit," but that should be taken
10 in the mitigation and maybe it wouldn't or maybe it
11 wouldn't have been received, but that argument could
12 have been presented to the judge in Skidelsky.

13 This isn't something that he was deprived
14 of an opportunity or didn't have the opportunity to
15 present in Skidelsky.

16 JUDGE SIPPEL: Well --

17 MR. TILLOTSON: But there's another thing
18 that -- just to understand here. Somehow, I didn't
19 make myself clear when I sought an issue on the issues
20 programs list; but to be absolutely clear -- and the
21 record will reflect this; it's in the files -- we
22 submitted to Your Honor in the Petition to Enlarge
23 issues, issues programs lists that showed that they
24 were all prepared in the month of June or thereabouts -
25 - I can't remember the exact month -- of 1990 -- even

1 though they covered three or four earlier quarters.

2 Now, as a matter of just absolute
3 operative fact, a broadcaster that says he went to the
4 NAB in the fall of -- in February of 1990 to check his
5 compliance, but even then didn't have his issues
6 programs list prepared and had to make them up for
7 three or four quarters many months later, that's
8 something that would be -- I could cross examine on if
9 this material goes in. And we'll get into that whole
10 issue, because I think I can show -- if we want to get
11 into this, I think there's enough material out there to
12 spend a good bit of time on -- in developing what did
13 he do and what happened after that.

14 MR. LYNCH: I'll tell you exactly what I
15 did and exactly what happened. I relied on the
16 statement that's in here that my public files were
17 complete. Again, I had been working with this person
18 for almost 20 years at the time and I relied on her
19 heavily. She was good.

20 As I testified on the stand in Skidelsky,
21 as you probably remember, is that I heard a rumor -- A
22 friend of mine came in who was working with Bradmark at
23 that time and said he was going to pull a dirty trick
24 off on me and I should go up -- you know -- I should
25 really cover myself.

1 Whereupon, I went around to just see what
2 in God's name he could possibly pull in his dirty
3 tricks bag. And then when I went into the public file
4 I looked at it and it was not adequate in any way,
5 shape or form. And at that point in time, yes, all the
6 notes in there were June of 1990. I had started to --

7 You know, in my mind, no, this did not in
8 any way, shape or form reflect what I'd been doing for
9 community service; and I at least wanted a showing in
10 there.

11 And another major thing is that I fixed
12 the Crystal Awards, which shows the nuts and the bolts
13 and the specific programs that we put on the station,
14 and that was refused by Bradmark, totally refused.
15 Offered and refused. And there are two or three sworn
16 statements that will back me up on that one.

17 So this thing has been twisted --

18 JUDGE SIPPEL: Well, it would seem to me
19 that if this does come in that you would have -- since
20 you're saying that you went to a compliance program and
21 came back in 1990 -- I think you gave me a date of
22 February 1990 -- your putting your ship in order, so to
23 speak -- and you're nodding yes -- and yet what Mr.
24 Tillotson is saying that in the process of putting your
25 house in order, you failed to --

1 MR. TILLOTSON: Six months -- Mr. Lynch --
2 six months later or five months later when he got
3 "word" that somebody might come by and look, he went
4 and looked at his public file and discovered that the
5 employee that he'd relied upon for 20 years to whom
6 he'd brought back this material, said, "Would you check
7 the public file. I was just at the NAB convention."
8 And they checked off and everything was fine. Well, he
9 discovered five months later that that wasn't fine when
10 he personally went and looked.

11 Is that what he wants to mitigate the
12 record with, Your Honor?

13 MR. LYNCH: Yes. Absolutely. Nobody in
14 his right --

15 JUDGE SIPPEL: Well, he's entitled -- I
16 mean, you know --

17 MR. TILLOTSON: Fine.

18 JUDGE SIPPEL: -- it reaches a point where
19 you can only offer so much help. And I think that
20 we're going to just have to let Mr. Lynch put his case
21 on and you'll be prepared to address it.

22 But that doesn't mean that I'm going to
23 add that issue.

24 Now, the evidence --

25 MR. TILLOTSON: No, I understand --

1 JUDGE SIPPEL: You know the rules.

2 MR. TILLOTSON: Yes. Well, this relates
3 to this particular --

4 JUDGE SIPPEL: All right. I'm not
5 rejecting out of hand your objections with respect to
6 paragraphs 4 and 5, Mr. Schonman, but my ruling on this
7 is I'm satisfied that this is the way to go is to let -
8 - I'm going to let Mr. Lynch tell it his way. And this
9 is -- the material in paragraph 4 and 5 is not all that
10 extensive. I'm not worried about cluttering the record
11 with that in and of itself. And we'll have to see how
12 this goes on findings, wait 'til all the evidence is
13 in.

14 So I'm going to receive, subject to the
15 objections of these discussions, I'm going to receive
16 Exhibit 8 in its entirety on the issue of
17 mitigation/exculpation.

18 (The item referred to,
19 Normandy Exhibit No.
20 8, was received in
21 evidence).

22 JUDGE SIPPEL: Next is Exhibit 9. Exhibit
23 9 is an 18-page document, which is entitled -- this one
24 doesn't have a title. This Exhibit has no descriptive
25 heading on it.

1 Can you tell me what these documents are
2 relevant to?

3 MR. LYNCH: It's -- the paragraph was
4 character and YLR performance testimonial.

5 Basically, 9 and 10 are the same thing,
6 other than 9 is solicited, 10 is unsolicited.

7 JUDGE SIPPEL: What does the information
8 in 9 relate to, what issue?

9 MR. LYNCH: Programming.

10 JUDGE SIPPEL: Programming?

11 MR. LYNCH: Programming and mitigation.
12 It's -- running strong -- you know -- trying to
13 categorize some of the things that we've been doing
14 over the years on WYLR open license period. And it's
15 mitigating as far as character. Again, if I'm as lousy
16 as Mr. Tillotson says I am, I probably wouldn't spend
17 the time and effort to let this sort of thing go on,
18 especially -- in No. 10.

19 The majority difference between these, the
20 first ones are sworn and I asked for them and the ones
21 in No. 10 are basically from our public files or public
22 letters.

23 JUDGE SIPPEL: All right. Let's start
24 with Exhibit 9, then.

25 Mr. Tillotson, do you have anything

1 overall that you want to say about these --

2 MR. TILLOTSON: Yes. Overall, I can't --
3 I would object to -- leaving aside the couple that are
4 his own employees relating to programming, which would
5 be 9, 4 and 5, Richard Dusenbery, 9, 7 and 8, which is
6 Thomas Jacobson, and I thought there's one other
7 employee, but -- may have to come back to it; but
8 leaving aside the employees --

9 JUDGE SIPPEL: Clifford Grant. I think
10 Clifford Grant was a former employee.

11 MR. TILLOTSON: Or a former employee.

12 But leaving aside the employees or former
13 employees, I would object to them on relevancy grounds
14 because, on the broad scale, none of them really tell
15 us about programming that the station -- that this
16 station did. And some of them -- and they talk, again,
17 about Normandy and WWSC, so you can't -- a few of them
18 talk about just the FM, but, even then, it doesn't talk
19 about programming. But for the most part, they're just
20 the general kind of statements that we really don't get
21 to what did this radio station do in the way of
22 programming.

23 And, similarly, although they might be
24 arguable that somehow it's showing Mr. Lynch's
25 involvement in the community or his service to the

1 community, again, the Chris Lynch versus Normandy
2 versus the radio station is so intermingled that these
3 really can't be looked at as to -- at this stage -- as
4 to his character or to his civic virtues, other than as
5 a normal radio broadcaster in town that does run PSAs
6 and do other things that all radio broadcasters do.
7 And I think for mitigation -- need something more than
8 that.

9 There's the other objection is I would
10 object to any of these documents that are not under
11 penalty of perjury coming in for any purpose, because
12 they really don't have -- they're not in any
13 evidentiary form. And I would object to any ones that
14 are deemed to be relevant that are under penalty of
15 perjury coming in without me getting an opportunity to
16 cross examine the individuals to pin down what they
17 really know and what -- in specifics -- their broad
18 accolades for the station and Mr. Lynch are based on.

19 JUDGE SIPPEL: Mr. Schonman.

20 MR. SCHONMAN: I sense there is -- there
21 are problems here and there regarding intermingling of
22 the two stations; but I think it will be necessary for
23 us to just work through each letter. I think we can
24 get through that quickly.

25 Any broad statement that I make is not

1 going to be helpful.

2 JUDGE SIPPEL: Okay. Thank you.

3 Well, for starters, I already made my
4 ruling with respect to the employees. And Mr. Lynch
5 has assured me that they are going to be here.

6 So the receipt of their -- they can be
7 right here to sponsor their own affidavits and so we
8 can wait until they come in to receive theirs.

9 Now, let me just be sure that we got the -
10 - we have the universe down correctly.

11 That's Mr. Thomas Jacobson. What's his
12 position in the company?

13 MR. LYNCH: Program Director, WYLR.

14 JUDGE SIPPEL: All right. And how about -
15 - Go ahead.

16 MR. LYNCH: And he was on the air, I think
17 about six years, seven years total.

18 JUDGE SIPPEL: So he's been there for the
19 relevant period.

20 MR. LYNCH: Portion of the relevant
21 period.

22 JUDGE SIPPEL: Portion of the relevant
23 period.

24 And how about Mr. Clifford Grant? He's a
25 former employee?

1 MR. LYNCH: He's worked for us for about
2 20 years -- a little bit over 20 years; but, oh, a good
3 part of the period, he was the News Director.

4 JUDGE SIPPEL: All right. So he's --

5 MR. LYNCH: Both stations.

6 JUDGE SIPPEL: He's going to have -- and
7 when did he leave the station?

8 MR. LYNCH: About three years ago.

9 JUDGE SIPPEL: All right.

10 MR. LYNCH: (Inaudible).

11 JUDGE SIPPEL: I beg your pardon. I can't
12 hear you.

13 MR. LYNCH: He may have said it in his
14 affidavit.

15 JUDGE SIPPEL: Well, that's all right --
16 But he's important to your story -- to your case. Is
17 that correct?

18 MR. LYNCH: Yes. But as a non-employee I
19 would hope we might be able to talk to him up in Glens
20 Falls.

21 JUDGE SIPPEL: Well, I don't see it
22 thataway. I mean, if you don't bring him in, there's
23 nothing I can do except to draw inferences against you.
24 But it seems to me that these are the people that -- I
25 don't want to keep repeating myself.

1 What page is his affidavit on?

2 MR. LYNCH: It's the final page, 17.

3 JUDGE SIPPEL: "He wants to personally
4 attest that our coverage of local news and events was
5 the most thorough of any stations with Glens Falls
6 markets."

7 Well, again, I'm not going to permit --
8 I'm just not going to permit that to come in in this
9 fashion without him being here to be cross examined.

10 And, as I say, I did not put him in the
11 category of a non-party "public-type witness."

12 MR. LYNCH: He's the Chief Fire Marshall
13 of Queensbury, new York. He has responsibilities as do
14 a number of these other people.

15 Perhaps we could get some sort of
16 understanding whether we want to cross examine --
17 people in my integration Exhibit; and maybe we could
18 just coordinate this whole thing.

19 I honestly don't know if I could bring him
20 down here.

21 JUDGE SIPPEL: Well, there's another
22 possibility and that is you might want to arrange for
23 his deposition.

24 MR. TILLOTSON: We don't have any desire
25 to go to New York and take a deposition, Your Honor. I

1 don't think that's our burden.

2 JUDGE SIPPEL: Well, I was trying to look
3 for alternatives to get his testimony. I don't want
4 this in with -- since he is a non-employee. If he were
5 a present employee --

6 MR. TILLOTSON: But, Your Honor, he's a
7 critical party. And you also have to look -- the
8 paragraph that you pointed to, he's talking about --
9 he's attesting -- he's personally attesting to that
10 "Our coverage of local news and events was the most
11 thorough of any station -- " and he puts in parentheses
12 's' " -- in the Glens Falls market.

13 Now, in order to get -- I mean, when you
14 have someone that's the former News Director of the
15 station is making a statement like that, obviously, you
16 need to know the basis on which he's making that
17 statement. But, more importantly, he's very careful
18 not to say, "WYLR's news programming, which ran from
19 these hours and these time periods and covered these
20 issues -- " He doesn't tell us anything specific, Your
21 Honor. I mean, so --

22 MR. TILLOTSON: I recognize Mr. Lynch's
23 problem of not being represented by counsel; but you're
24 talked with him on that through the very outset of this
25 hearing.

1 This is an Exhibit that in order to --
2 been presented in a way that would have had some
3 substance, probative value, it should have said what
4 the statement did, what WLR did, while he was the News
5 Director, under his direction, the type of news it
6 broadcasts, when it broadcasts the news, how frequently
7 it broadcasts the news, how many news personnel it has
8 and what its news source is.

9 Had there been an Exhibit like that by a
10 former employee with specifics not broad generalities,
11 I might well have sat here and said, "I don't need to
12 cross examine the man."

13 But the fact is that broad generalities
14 with no specifics at all -- And I submit, Your Honor,
15 that once I get him on the witness stand we're going to
16 find out the WYLR didn't do a thing.

17 JUDGE SIPPEL: Well, that's argumentative.
18 But I am disturbed about the -- I am disturbed about
19 the manner in which this affidavit is being presented
20 in this broad way. And -- as I say -- I'm not going to
21 let it come in. I'm not going to let it come in
22 without him being here to -- without him being cross
23 examined. It just goes back to what you were saying
24 about -- well -- here or someplace else.

25 MR. LYNCH: Well, can we go --